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To: Comprehensive Planning Committee
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Subject: **Comments on Draft Rules for Mississippi River Corridor Critical Area**

Background and Purpose

The Minnesota Department of Natural Resources, on June 2, 2014, published a Request for Comments on draft rules for the Mississippi River Corridor Critical Area (MRCCA). The proposed rules would replace the Standards and Guidelines for Preparing Plans and Regulations for the MRCCA in Executive Order 79-19 by Governor Quie in 1979, and would mandate new MRCCA zoning overlay districts and regulations to replace the districts and regulations that were adopted by the City and approved by the state pursuant to Exec. Order 79-19 in 1982. The DNR will accept comments on the draft rules through August 15.

This memo provides detailed comments and specific recommendations. A shorter companion piece outlines primary City comments and concerns.

Minnesota statutes that govern the rulemaking process require that the purposes of the rules be achieved through the least costly and least intrusive methods, and that the DNR demonstrate that the rules are needed and reasonable. Therefore, this is a primary focus of our comments and recommendations.

Principal general guidelines in Executive Order 79-19 for preparing plans and regulations are:

1. Management of the river corridor as a multiple-purpose resource by:
 - conserving the scenic, environmental, recreational, mineral, economic, cultural, and historic resources and functions of the river corridor; and
 - providing for the continuation and the development of a variety of urban uses; and
2. Management of the river corridor consistent with its natural characteristics and its existing development, using districts with different standards and guidelines to fit the character and existing development for different areas within the corridor.

MN Stat. 116G.15 reflects this language in authorizing the rules and directing the DNR to ensure that the river corridor is managed as a multipurpose resource in a way that “conserves the scenic, environmental, recreational, mineral, economic, cultural, and historic resources and functions of the river corridor, [and] . . . provides for the continuation, development, and redevelopment of a variety of urban uses.” It goes on to require that the DNR “take into account municipal plans and policies, and existing ordinances and conditions” in establishing districts for “management of the river corridor consistent with its natural characteristics and its existing development, and in consideration of potential new commercial, industrial, and residential development and redevelopment.” Therefore, this is also a primary focus of our comments and recommendations.

Critical Area History and General Comments

- 1976 MRCCA, stretching 72 miles from Dayton to Hastings, designated as a state critical area by Governor Wendell Anderson (Executive Order No. 130).

The MRCCA includes about 7150 acres of land in St. Paul, 21% of total city land area. Of the roughly 17,000 parcels of land in the Critical Area, 3948 parcels (23%) are in St. Paul.

- 1979 MRCCA designation continued by Governor Albert Quie (Executive Order 79-19). Exec. Order 79-19 required local units of government to adopt local plans and regulations for the MRCCA, and provided Standards and Guidelines for this.

Interim Development Regulations for the MRCCA. Exec. Order 79-19 included Interim Development Regulations that it said “shall remain in effect . . . for each local unit of government until it adopts plans and regulations approved by the Council.” Exec. Order 79-19 said that “at the options of local units of government, they [the Interim Development Regulations] may be used as guidance for the preparation of plans and regulations” but “should not be used as a complete model ordinance.”

DNR documents misrepresent the Interim Regulations in Exec. Order 79-19 as “existing regulations,” even though they were replaced by locally adopted regulations over 30 years ago (1982 in St. Paul).

Interim Use District Boundaries. The Interim Regulations in Exec. Order 79-19 said that because the Corridor “should be managed as a multiple-purpose resource, and possesses a variation in both natural characteristics and types of urban development,” it was segmented into four use districts “which shall be applied throughout the Interim Period” pending adoption of local regulations.

DNR documents and maps misrepresent the interim use districts in Exec. Order 79-19 as current, causing unnecessary confusion. DNR maps showing MRCCA districts should be updated to show current locally adopted MRCCA districts. Any reference to the interim use districts should accurately represent them as the original interim use districts in 1979, noting that district boundaries and designations were amended in approved local ordinances over 30 years ago. The DNR has an ethical responsibility to provide accurate information, which the public should be able to count on.

- 1981 The first St. Paul Mississippi River Corridor plan under the requirements of the MRCCA was adopted by the City Council and approved by the EQB for management of the MRCCA as a multipurpose resource consistent with its natural characteristics and its existing development, in a way that conserves the scenic, environmental, recreational, mineral, economic, cultural, and historic resources and functions of the river corridor as required by Exec. Order 79-19.

The 1981 Mississippi River Corridor Plan identified the areas to be protected as a continuous publically-owned and maintained river-oriented park, open space, wildlife preservation, and natural area system, almost all of which has now been acquired. Since creation of the MRCCA, the St. Paul Port Authority alone has transferred over 1300 acres to the St. Paul Department of Parks and Recreation for parks and open space purposes. Of the 7150 acres of land in St. Paul in the Critical Area, about 2500 acres (35%) are now publically-owned parks and open space.

In the ensuing 30 years, the City has continued to focus a great deal effort on planning, development and management of this park and open space system and other areas in St. Paul for the purposes of the MRCCA, from creation of the St. Paul Riverfront Corporation and all of the important work it has done over the years, to the more recent Great River Passage Master Plan adopted in 2013

- 1982 St. Paul’s local River Corridor regulations were adopted and approved by the EQB, establishing standards and criteria for four River Corridor Overlay Districts:

RC1 River Corridor Floodway Overlay District

RC2 River Corridor Flood Fringe Overlay District

RC3 River Corridor Urban Open Overlay District

RC4 River Corridor Urban Diversified Overlay District

These are the existing River Corridor Overlay Districts currently in effect in St. Paul.

- 1995 EQB responsibilities for the Critical Area shifted to the DNR by Governor Arne Carlson (Reorganization Order 170).
- 2009 Legislature directs DNR to conduct rulemaking for the Mississippi River Corridor Critical Area.
- 2011 DNR develops draft rule after participatory stakeholder process, but rulemaking authority lapses.
- 2013 Legislature directs DNR to resume rulemaking process in consultation with local governments. The new rules are to update, replace, and be more prescriptive than the Standards and Guidelines for Preparing Plans and Regulations for the MRCCA in Exec. Order 79-19. MN Stat. 116G.15 authorizes the rules and directs the DNR to manage the MRCCA as a multipurpose resource, “consistent with its natural characteristics and its existing development, and in consideration of potential new commercial, industrial, and residential development and redevelopment,” in a way that “conserves the scenic, environmental, recreational, mineral, economic, cultural, and historic resources and functions of the river corridor, . . . provides for the continuation, development, and redevelopment of a variety of urban uses, including industrial and commercial uses, and recreational and residential uses, where appropriate.”

Part 6106.0020 PURPOSE of the working draft rules fails to recognize the full range of administrative duties and MRCCA management objectives to be achieved through the rules proscribed in MN Stat. 116G.15 and noted above.

Proposed new MRCCA Zoning Overlay Districts and Use of the Districts in St. Paul

Background and Purpose

The Interim Regulations in Exec. Order 79-19 said that because the Corridor “should be managed as a multiple-purpose resource, and possesses a variation in both natural characteristics and types of urban development,” it was segmented into four use districts “which shall be applied throughout the Interim Period” pending adoption of local regulations. The interim use district boundaries, defined in one page of text in Appendix B of Exec. Order 79-19, broadly and roughly reflected the predominant land use directly along the 144 miles of riverfront itself.

They did not attempt to reflect land uses further from the river, leaving such more fine-grain analysis for local regulations.

The use district boundaries described in Appendix B of the Executive Order, that the Interim Development Regulations said “shall be applied throughout the Interim Period” pending adoption of local plans and regulations, broadly and roughly reflected the predominant land use directly along the river itself. They did not reflect or fit land uses in the critical area further from the river, but rather left that more detailed analysis for local regulations. For example, the interim regulations designated the Highwood neighborhood east of Highway 61 and south of Boxwood Avenue as “urban diversified” and the Highwood neighborhood east of Highway 61 and north of Boxwood Avenue as “urban open space” not because these districts best described or best fit these areas, not because there is any major difference in the residential character of these areas, and not because there a difference in how these areas should be regulated, but rather because these districts best described and fit the predominant land use directly along the river itself, and there happens to be a section line at Boxwood that was easy to use to define the boundary. The district in the interim regulations that best describes and fits the Highwood neighborhood north and south of Boxwood is the “urban developed district,” but the interim regulations simply didn’t get into the complicated task (especially with 1979 technology) of trying to define use districts for a 72 mile long area based on predominant existing development beyond the riverfront itself.

At a recent public information meeting, DNR staff indicated that they are working to keep property in the same districts with the same standards as today, apparently meaning the interim use districts in Exec. Order 79-19 that DNR documents and maps misrepresent as current even though district boundaries and designations were amended in state-approved local ordinances over 30 years ago. But that would make no sense where existing districts or where former districts that were in effect over 30 years ago are inconsistent with existing development, something that would also be inconsistent with language in MN Stat. 116G.15 authorizing the rules that directs the DNR to establish districts for management of the river corridor consistent with its existing development.

Although the draft MRCCA rules generally do not regulate land use, the rules provide for six different districts that are tied to dimensional standards, particularly limits on building height and setback requirements. In theory, the districts are drawn to group areas of a similar type and intensity of land use together.

The proposed district boundaries for Saint Paul can be seen in Figure 1, attached. Proposed district designations are inconsistent with the height and setbacks of existing development in some areas, and may unreasonably or unnecessarily restrict some key redevelopment sites, including the Ford site and the West Side Flats. In other areas, proposed district designations seem to be inconsistent with how the districts are used in other parts of the MRCCA.

Part 6106.0100 DISTRICTS, Subp. 2. Rural and Open Space District (CA-ROS)

Executive Order 79-19 described and had different standards and guidelines for a Rural Open Space District and a separate Urban Open Space District because it correctly recognized the different characteristics of each, and that standards and guidelines appropriate for one would not always be a good fit for the other. The draft rules try to combine the two into a single ROS Rural and Open Space District using the much greater setback standards from the old Rural Open Space District. Unfortunately, this does not meet the requirement that the new districts be

consistent with existing development. Existing and planned urban park and open space development in St. Paul would be broadly nonconforming with these greater setback requirements, especially with the additional proposal in the draft rules to also apply bluff setback requirements to “*very steep slopes*” defined as slopes with an average grade of at least 18% (about 8 degrees, a 2 foot rise in an 11 foot run) and a height of at least 10 feet.

Critical Area regulations for park and open space land managed by St. Paul Parks and Recreation are essentially redundant. Without Critical Area regulations, the publicly owned park lands and natural areas that make up this district would continue to be well-managed by public officials and park professionals for the public purposes of the Critical Area to protect unique and valuable natural, aesthetic, cultural, historical, biological, and ecological functions of the river corridor, and to conserve and provide for the scenic and recreational resources and functions of the river corridor for the use and enjoyment of the region.

Overly prescriptive rules may harm the ability of public officials and park professionals to develop practical finer-grain site-specific plans to best meet these broad public purposes. For a particular site, for example, the best location for a building or other structures may be on or within 20 feet of a very steep slope, and the structure may provide for slope stabilization. A retaining wall or boulder wall may be the best way to control erosion and provide terracing to manage stormwater in some cases,. The best height for a street light or building is likely sometimes to be more than 35 feet. For the publically owned park lands and natural areas that make up the CA-ROS district it would be better to leave it to the public officials and park professionals responsible for them to apply practical and best management solutions than to be overly prescriptive with broad-brush, needlessly problematic corridor-wide limitations in the rules. The Minneapolis Park Board made a similar comment in 2010, saying that the proposed standards appeared arbitrary and capricious.

The draft rules released in April reclassified the part of the Ford site west of Mississippi River Boulevard as CA-ROS. For this site CA-UM Urban Mixed District, described as mixed-use areas that are part of the urban fabric of the river corridor, including commercial and industrial areas, would be more consistent with the existing privately owned industrial development that extends to the shoreline and includes 5-story hydro and power plant buildings. The proposed CA-ROS Rural and Open Space district is completely inconsistent with the existing buildings and uses on this site.

MN Stat. 116G.15 and Exec. Order 79-19 call for providing for the continuation, development, and redevelopment of a variety of urban uses, including industrial and commercial uses, consistent with existing development, and call for conserving historic and economic resources such as the hydro and power plant buildings. CA-ROS, which is inconsistent with the existing structures on the site and would make them nonconforming, is inconsistent with this. Special exceptions might provide for river dependent use such as the hydroelectric plant and for reuse of historic buildings such as the steam plant, but could create more complications than necessary. Would that really be the best approach? The new district maps originally proposed by DNR and MNRRA staff in June 2010 showed this area as “land use district F” (now CA-UM), described as “*highly urbanized, mixed-use areas that are part of the urban fabric of the river corridor,*” which is the best fit for this area.

Specially highlighted in the *Mississippi River Companion*, a National Park Service guide to the Mississippi National River and Recreation Area, the Ford site, including the hydroelectric plant and the steam plant, is one of the most historically and economically significant industrial sites

in St. Paul and the Critical Area. It is identified as a historic site of major significance in the 1983 Historic Sites Survey of Saint Paul and Ramsey County by the St. Paul Heritage Preservation Commission and the Ramsey County Historical Society. It was developed here to utilize water power from Lock and Dam #1 on the Mississippi River. Henry Ford had a great interest in water power, and this was the largest of the factories he built using water power, nationally significant. At this site overlooking the river in 1925, Ford said, “This scene calls for a plant that will harmonize. I intend to put up a beautiful building that will in no way detract from its beauty.” When the plant was finished it was called the most beautiful self-sufficient factory in the world. CA-ROS is inconsistent with the MRCCA purpose of conserving economic and historic resources such as the existing development on this site.

The draft rules released in April reclassified the developed residential neighborhood in the area east of Highway 61, which is separated from the river by distance, industrial areas, and Highway 61, as CA-ROS Rural and Open Space, an inappropriate designation for a Saint Paul neighborhood. The principal impact of this change would be to increase required bluff setbacks, which the draft rules now also propose to apply to “very steep slopes,” from the 40 foot setback required in all other districts to a 100 foot setback required in the CA-ROS district. It would make a large number of homes and yards in the Highwood neighborhood nonconforming. This change is unjustified, unreasonable, highly intrusive, and does not comply with the direction in MN Stat. 116G.15 that the rules be consistent with existing development. The new district maps originally proposed by DNR and MNRRA staff in June 2010 showed the area east of Highway 61 as “land use district E,” which is now CA-SR Separated from River. The draft rules describe the CA-SR district as “characterized by its physical and visual distance from the river. It includes land separated from the river by distance, development, or a transportation corridor,” which is appropriate and better describes this area, which is separated from the river by all three.

Part 6106.0100 DISTRICTS, Subp. 4. River Neighborhood District (CA-RN).

The draft rules describe the CA-RN River Neighborhood District as “characterized by residential neighborhoods that are riparian or readily visible from the river or that abut riparian parkland.” The phrase “or that abut riparian parkland” is a recent addition to the description. None of the areas in St. Paul shown as CA-RN on the draft maps are either riparian or readily visible from the river. The closest any of these areas get to the description of the CA-RN district is that they abut parkland at some point, fairly common for almost any district. But they do not abut riparian parkland. Rather, the parkland they abut is above and behind the bluff, and these areas are all characterized by physical and visual distance from the river, and are all separated from the river by distance, development, or a transportation corridor.

The new district maps originally proposed by DNR and MNRRA staff in June 2010 showed all of these areas as “land use district E” (now CA-SR Separated from River), described as “characterized by its physical and visual distance from the river, . . . [including] land separated from the river by distance, development, or a transportation corridor,” which is appropriate and better describes these areas. CA-SR is the best fit for all of the following areas where the draft maps show CA-RN:

- 1) The fully-developed residential/institutional neighborhoods east of Mississippi River Boulevard, from Minneapolis on the north to W. 7th St./Highway 5 on the south, which is separated from the river by high bluffs and by Mississippi River Boulevard.

- 2) The fully-developed West Side residential areas east of the Smith Avenue High Bridge south of Cherokee Avenue and Prospect Avenue, and along the southwest side of Concord Street, areas separated from the river by high bluffs, streets, and/or commercial, industrial, and residential development, transportation corridors including railroads in the less restrictive CA-UM Urban Mixed District.
- 3) The Mounds Park residential area, which is separated from the river by high bluffs and by Mounds Park and Mounds Boulevard, where the 35 foot CA-3 height limit would be inconsistent with some RM2 zoning and existing development.
- 4) A couple of areas east of Highway 61 that are separated from the river by distance, industrial areas, railroad yards and tracks, and Highway 61.

To fulfill the purposes of the critical area consistent with direction and guidelines in MN Stat. 116G.15 and Exec. Order 79-19, it is unnecessary and inconsistent to put these areas into a district that doesn't fit. If there is justification for limiting height in CA-SR areas adjacent to a new district for urban open space for compatibility with park lands and natural areas, that can be done by limiting height to 40 feet, for example, within 150 feet of an urban open space district and to 50 feet, for example, within 300 feet of an urban open space district.

Part 6106.0100 DISTRICTS, Subp. 5. River Towns & Crossings District (CA-RTC)

For the purpose of streamlining and simplifying the rules, the CA-RTC district can be combined with the CA-SR and CA-UM districts. The proposed use of the CA-RTC district is extremely limited: Dayton, a tiny sliver at Franklin Avenue, small areas at the ends of the Marshall-Lake Bridge, part of the St. Thomas campus, at Ford Parkway, part of the Ford site, the south end of the I-35E bridge, and a narrow sliver along the river in Hastings. Proposed CA-RTC standards are similar to proposed CA-SR and CA-UM standards. Rather than complicating the rules with an entirely separate district for such limited use, if the standards need to be slightly different in specific unique cases to fulfill the purpose of the critical area it can be written into the standards.

The new district maps originally proposed by DNR and MNRRA staff in June 2010 showed the small areas at the ends of the Marshall-Lake Bridge, the St. Thomas campus, the blocks on the north side of Ford Parkway as “land use district E” (now CA-SR Separated from River), described as “characterized by its physical and visual distance from the river, . . . [including] land separated from the river by distance, development, or a transportation corridor,” which is appropriate and a good description of these areas. To fulfill the purpose of the critical area, consistent with direction and guidelines in MN Stat. 116G.15 and Exec. Order 79-19, there doesn't appear to be any justification for not including these areas in the CA-SR district, consistent with what was originally proposed by DNR and MNRRA staff.

The new district maps originally proposed by DNR and MNRRA staff in June 2010 showed the entire portion of the Ford site south of Ford Parkway in the MRCCA as “land use district F” (now CA-UM Urban Mixed District), described as “*highly urbanized, mixed-use areas that are part of the urban fabric of the river corridor,*” which is a good fit for this area. To fulfill the purpose of the critical area, consistent with direction and guidelines in MN Stat. 116G.15 and Exec. Order 79-19 to manage the MRCCA as a multipurpose resource, consistent with its natural characteristics and its existing development, providing for the continuation, development, and redevelopment of a variety of urban uses in a way that “conserves the scenic, environmental, recreational, mineral, economic, cultural, and historic resources and functions of

the river corridor,” there doesn’t appear to be any justification for not including the upland portion of the Ford site east of Mississippi River Boulevard in the CA-UM district, consistent with what was originally proposed by DNR and MNRRA staff, or in the CA-SR district. The CA-SR Separated from River District, which is used directly across the river from the Ford site, is a less restrictive option that would be a better fit for appropriate redevelopment of the Ford site, especially for the portion further east.

Part 6106.0100 DISTRICTS, Subp. 6. Separated from River District (CA-SR)

As noted above, the CA-SR Separated from River District is under-used in St. Paul, a fully-developed area where the Critical Area widens considerably, and there are many areas that fit the description of the CA-SR district as “characterized by its physical and visual distance from the river, . . . [including] land separated from the river by distance, development, or a transportation corridor.” Greater use of this district in St. Paul would be consistent with its use in other similar areas, including nearby in Mendota and Mendota Heights.

Part 6106.0100 DISTRICTS, Subp. 7. Urban Mixed District (CA-UM)

Proposed use of the CA-UM Urban Mixed District in St. Paul is generally consistent with existing development and City plans for potential redevelopment, with height exemptions for industrial and utility structures requiring greater height for operational reasons, and with the option of a conditional use permit for greater height. One exception may be the West Side Flats, where the CA-UC Urban Core District may be more appropriate, taking into account existing conditions and policies, in consideration of potential new development, consistent with how the River Corridor Urban Diversified Overlay District (where there are no restrictions on the height of structures), and more consistent with how CA-UC is more broadly used for a much larger part of Minneapolis.

Keep in mind that the goal of minimizing interference with views in the Mississippi River Corridor Critical Area is not the same as a goal to keep buildings out of site that might be appropriate for a wild and scenic river but not for this area. The most iconic and appreciated views in the Mississippi River Corridor Critical Area include buildings and other structures for the multiple purposes and uses that this urban river corridor is all about. To fulfill the purpose of the critical area, consistent with direction and guidelines in MN Stat. 116G.15 and Exec. Order 79-19, there is no justification for being overly prescriptive about the height of structures in fully developed urban areas. That’s why the Interim Development Regulations in Exec. Order 79-19 did not have a height limit for the urban diversified district. This is reflected in language in the *MNRRA Comprehensive Management Plan* that “except in existing commercial and industrial areas, downtowns, and historic districts, currently *undeveloped* land areas in the corridor will continue to appear open from the river and its shoreline areas (as observed from the opposite bank), although there may be intensive development away from the shoreline.”

The CA-UM district includes residential uses as well as commercial, industrial, institutional and parkland uses. Therefore, the summary description of CA6 on the maps should be “Urban mixed-use areas including commercial, industrial, institutional, residential, and parkland uses,” and the description in Part 6106.0100 Districts, Subp. 7.A should be amended to say “. . . institutional, commercial, residential, and industrial areas.”

Part 6106.0100 DISTRICTS, Subp. 8. Urban Core District (CA-UM)

To fulfill the purpose of the critical area, consistent with direction and guidance in MN Stat. 116G.15 for establishment of districts, taking into account municipal plans and policies, and existing ordinances and conditions, consistent with existing development and in consideration of potential new commercial, industrial, and residential development, the CA-UM Urban Core District should be used for the portion of the St. Paul urban core on both sides of the river north of Plato Boulevard and Water Street between Lafayette Road/Highway 52 and the Smith Avenue High Bridge, except for the area the proposed new district maps show as CA-SR in the Irvine Park area west of Chestnut Street and north of the railroad tracks. This is more consistent with how the urban diversified district has historically been used, and more consistent with how CA-UM district is proposed to be used for a much larger portion of the Minneapolis urban core on both sides of the river along a 3½ mile stretch of the river from the Lowry Avenue bridge 1½ miles north of downtown Minneapolis to the south edge of the University of Minnesota east bank campus.

The proposed CA-7 height standard for tiering of structures from the river and blufflines, and structure design and placement to minimize interference with public river corridor views fulfills the purpose of the critical area regarding views for this district, consistent with direction and guidelines in MN Stat. 116G.15 and Exec. Order 79-19.

Proposed Locational Standards

Part 6106.0050 DEFINITIONS, Subp. 10. Bluff.

The bluff definition in the draft rules (slopes at least 25 feet high with an average grade of at least 30%) is generally consistent with that of the Minnesota Shoreland Rules and with the blufflines that were defined and mapped as part of St. Paul's River Corridor regulations adopted and approved in 1982. However, it also picks up some little hills that are not part of primary bluff complexes facing the river.

Part 6106.0050 DEFINITIONS, Subp. 54. Primary conservation area.

Given how this term is used (in part 6106.0130, Subp. 2, to require public recreational facilities, transportation facilities, and utilities to avoid *primary conservation areas*, and in part 6106.0170, Subp. 3, to require that "*primary conservation areas* must be set aside as protected open areas"), including slope preservation zones, unstable soils and bedrock, tree canopies, and scenic views and vistas, and cultural and historic sites and structures in the definition of *primary conservation area* is too broad.

Slope preservation zones, bedrock, and tree canopies are scattered about in all sorts of places where protection and administration of them as open space, whether through public ownership or conservation easements, is unjustified and makes no practical sense. These are common features of privately owned lots that have been fully developed for decades, often over a century, for a wide variety of urban uses including residential, institutional, commercial, and industrial uses that are important parts of the social, cultural, historic, and economic functions of the river corridor. Providing appropriate performance standards for development and uses where there are such features may be useful, but their presence in the landscape is no justification for requiring such areas to be protected as open space through public ownership or conservation easements. These are not the defining features of land that is needed as public park and open

space to conserve and provide for the scenic and recreational resources and functions of the river corridor for the use and enjoyment of the region. Performance standards can more reasonably provide for appropriate conservation of these features for the purposes of the Critical Area to protect critical state and regional resources from irreversible damage and manage the MRCCA as a multipurpose resource.

Regarding defining scenic views and vistas as *primary conservation areas*, the most iconic and appreciated scenic views and vistas in the river corridor include views of fully developed commercial and industrial areas that exemplify the Mississippi as a working commercial and industrial river and transportation corridor, the reason this is the location of a great city and a key part of the reason the MRCCA is nationally significant. This is something the draft rules seem to miss the mark on generally. It makes no practical sense to require that public transportation facilities and utilities avoid the fully developed commercial and industrial areas in these nationally significant scenic views and vistas, or that they be protected as open space, by including them in the definition of *primary conservation area*.

How would someone know if an existing vegetative stand is “significant,” and how would this be practically administered?

Part 6106.0050 DEFINITIONS, Subp. 73. Slope preservation zone.

Slope preservation zones (SPZs) are 20 foot zones surrounding very steep slopes in which structures, impervious surfaces, land alteration, and vegetation removal would be prohibited. Based on a shapefile from the DNR representing bluffs and “very steep slopes” as defined in the draft rules, it appears that about 1300 buildings would be in the new *slope preservation zones* proposed in the draft rules, making them nonconforming. It appears that SPZs would impact about 1800 properties in St. Paul. Many of these are small urban lots, and as a result prohibitions in the SPZ could deprive the property owners of reasonable use.

SPZs were not a feature of Exec. Order 79-19, nor are they a feature of Saint Paul’s current approved critical area overlay ordinance. Thus, the statement in the DNR’s Homeowner’s Guide to the MRCCA Working Draft Rules that building setbacks “will not change for most homeowners” is really misleading.

It is unnecessary and unreasonable to, for the purposes of the Critical Area, to prohibit structures and activity on “*very steep slopes*,” that may have as little as a 2 foot rise in an 11 foot run, measured over 50 feet, and also to add a new prohibition of structures and activity on flat areas within 20 feet of such relatively modest slopes. Slopes that meet the definition of a very steep slope are common in residential yards in fully developed areas, and are gentle enough that these yard areas are not typically maintained as natural areas, but rather are fully developed as urban lawns and gardens. Less costly and less intrusive performance standards, such as requiring plans be reviewed and approved by a qualified professional can equally well protect very steep slopes from erosion and preserve slope stability.

It is not clear what benefit, if any, would be derived from the proposed SPZ and BIZ. The Homeowner’s Guide says “the setback provisions are intended to keep buildings and other development activity away from . . . areas prone to soil erosion.” However, prohibitions on development on steep slopes themselves are unnecessary, and extension of this prohibition to adjacent areas is also unreasonable, unjustified, and makes no practical sense.

It may be best to drop the idea of slope preservation zones and simply delete the definition. An alternative would be to change the draft definition of *slope preservation zone* to “land on and within 20 feet of very steep slopes that touch or portions of which are within 20 feet of a bluff,” with the idea that in these location SPZs might be related to protecting bluffs and river views. But even in these locations, the extent of the proposed prohibitions seems more than would be necessary for the purposes of the MRCCA. This edit would reduce unnecessary and unreasonable regulation of slopes having nothing to do with bluffs, river views, and the purposes of the MRCCA. It would reduce the high cost and difficulties for property owners and cities caused by the prohibition of most structures and activities in SPZs, and needlessly making hundreds of existing homes, businesses, and fully developed urban yards and gardens nonconforming. It would also reduce the number of incredulous questions from affected property owners asking why.

Part 6106.0120 DIMENSIONAL STANDARDS, Subp. 3. Location of structures.

The CA-ROS setback requirements of 200 feet from the OHW of the Mississippi River and 100 feet from very steep slopes are overly prescriptive and problematic given the nature of the recreation activities and providing facilities to meet urban recreation needs inherent in CA-ROS, and the narrow space sometimes available. Given the nature of the park uses in CA-ROS, structures and impervious surfaces are very limited. With the publically owned park lands and natural areas that make up this district well-managed by public officials and park professionals for the public purposes of the Critical Area, overly prescriptive, problematic setback standards are particularly unnecessary. More practical setback standards for CA-ROS would be 50 feet from the OHW and 20 feet from the bluffline (consistent with the bluff impact zone) rather than from very steep slopes, with a provision for the local governing body responsible for these areas to apply best management solutions to fulfill the multiple purposes of the Critical Area where they determine something closer is necessary.

To take into account existing conditions as required in MN Stat. 116G.15, and to manage the MRCCA consistent with existing development as required in Exec. Order 79-19, the OHW, bluff, and steep slope related setback requirements should be changed to “0” for the CA-UC district, and it is important to provide more general exceptions for existing commercial and industrial development that is right up to the river, and for commercial and industrial development that needs a riverfront location.

Downtown Saint Paul is built right on the bluff and the river, and there are similar conditions in downtown Minneapolis. The River Center parking ramp, the Science Museum, the district heating plant, the West Building, the jail, and the Ramsey County East Building are all built right on the bluff. Kellogg Mall Park and parts of Kellogg Boulevard itself are built on structure right on the bluff.

Proposed redevelopment of the Ramsey County Government Center West site would be inconsistent with the draft rules. *Prosper: Momentum is Building*, a 2014 report from Mayor Coleman’s Downtown Task Force, identified the RGCG West site as a key redevelopment opportunity for Saint Paul. The redevelopment of the site is also a top priority for Ramsey County, and would return valuable land to the tax rolls.

The rules as drafted would have prevented construction of the Science Museum. The draft rules would also prohibit the creation of the river balcony, an important feature identified in the

recently adopted Great River Passage Master Plan, which will guide Saint Paul's continued reconnection to the Mississippi River over the next 30 years.

When the Planning Commission and a special St. Paul Critical Area Task Force, which included DNR staff, looked at updating St. Paul's River Corridor regulations several years ago, both recommended excepting "the area of downtown St. Paul along the river's left descending bank from Chestnut Street to the Lafayette/Highway 52 bridge" from location requirements in the regulations. There should be exceptions to all bluff and steep slope-related structure location requirements in the CA-UC district.

The draft rules define "*very steep slope*" as a slope with an average grade as little 8 degrees from horizontal (18%), which is a 2 foot rise in an 11 foot run, that may be as little as 10 feet high. The draft rules would prohibit structures, impervious surfaces, land alteration, and vegetation removal on all such slopes. These prohibitions are particularly onerous in regard to areas of very steep slopes that are relatively small in contiguous areal extent and/or not connected with bluff complexes—such as those found in a number of Saint Paul neighborhoods—and in areas that have been developed for commercial, industrial, or residential purposes for many years.

The DNR has indicated in presentations and in documents such as their Homeowners Guide to the Rules that these prohibitions are intended to protect slope integrity and reduce the potential for erosion. This can be achieved in a less intrusive and more reasonable manner through development standards, including but not limited to requiring a report and plans certified by a licensed professional such as a geotechnical or soils engineer showing that the soil types and geology are suitable for the proposed development, how slope stability will be protected, how the development will be accomplished without increasing erosion, and how vegetation will be managed to control runoff and increase ground water infiltration.

Our Parks design staff note that the proposed definitions of "*very steep slope*" and "*slope preservation zone (SPZ)*" (on and within 20 feet of very steep slopes) include areas that are not really prohibitive land forms and can reasonably be built on with competent design and construction. Maintained turf slopes are commonly built to a 25% grade, and any earth sheltering of buildings almost requires slopes of at least this minimum. Best management practices and accepted engineering standards typically permit restoration slopes of 33% (1 foot rise over a distance of 3 feet) to 50% (1 foot rise over a distance of 2 feet). Moreover, current stormwater treatment and erosion control requirements (both during and after construction), including proposed requirements in the draft rules, are much more stringent than those in place at the time of Exec.Order 79-19. Broad prohibitions on development in these areas are unreasonable, unnecessary, and intrusive.

The Interim Development Regulations, which were in effect between 1979 and 1982 and said they may be used as guidance for permanent regulations but should not be used as a model ordinance, did not allow new structures on slopes greater than 18%. This is also the restriction in the City's existing River Corridor ordinance. However, the specific standards and guidelines for preparing plans and regulations in Exec. Order 79-19 simply said they need "to protect bluffs greater than 18% and to provide conditions for the development of bluffs between 18% and 12%." The standards and guidelines did not suggest that development needs to be prohibited on all very steep slopes, or even that development needs to be prohibited everywhere on bluffs.

Drafting new rules to replace the standards and guidelines for preparing plans and regulations in Exec. Order 79-19 not only provides an opportunity to take a fresh, thoughtful look at what

standards are needed and reasonable to protect bluffs and very steep slopes. Minnesota statutes that govern the rulemaking process require that if existing standards are unneeded or unreasonable, or if the purposes of the rules can be achieved through less costly or less intrusive methods, they must be replaced by new standards that are less costly, less intrusive, and more reasonable.

Changes to increase bluff setback requirements and apply them also to all very steep slopes

A 100 foot bluff setback requirement that currently applies only in rural open space areas under the draft rules would also apply to most urban parks and some urban developed areas including the Highwood neighborhood in St. Paul. Perhaps the most significant change from the rules that were drafted in 2010 is a change to apply 40 to 100 feet bluff setback requirements also to all very steep slopes. This significantly increases setback requirements and would make a lot of additional homes and other buildings nonconforming. An estimated 600 buildings in St. Paul alone would be in these bluff and very steep slope setback areas.

It is not clear what benefit, if any, would be derived from these proposed changes. They are unreasonable, unnecessary, overly intrusive, and do not comply with the direction in MN Stat. 116G.15 that the rules be consistent with existing development.

Proposed Height Standards

Part 6106.0120 DIMENSIONAL STANDARDS, Subp. 2. Structure height.

For the purpose of protecting scenic views and vistas, relating to language in the *Standards and Guidelines for Preparing Plans and Regulation* in Executive Order 79-19 that “structure site and location shall be regulated . . . to minimize interference with views of and from the river, except for specific uses requiring river access,” an absolute 35 foot height limit for the CA-ROS district or a separate Urban Open Space District is unjustified and unreasonable. Given that the publically owned park lands and natural areas that make up this district are already well-managed by public officials and park professionals for the public purposes of the Critical Area, an overly prescriptive, needlessly problematic height standard would be particularly bad. A provision to allow taller structures with a conditional use permit subject to the condition that there is minimal interference with views of and from the river should be added.. As suggested in the Executive Order standard cited above, this is often more a matter of location than of height, which can be considered in the review of a conditional use permit.

The rules need to be clear that minimal interference with views of and from the river does not mean a structure can’t be seen. The urban setting of the MRCCA, in a major city located here because of the river, is key to its significance and importance. Well designed buildings can enhance the MRCCA experience. Some of the most beautiful and significant views in the Critical Area, views highlighted in MRCCA and Mississippi National River and Recreation Area (MNRRA) documents, involve the juxtaposition of the natural and urban built environment.

There are not many buildings in the CA-ROS district, but a larger scale park building might be most appropriate and beautiful for a particular use or site. There are numerous examples of this in national parks, where multi-story landmark buildings that enhance the visitor experience would look silly at a smaller scale. Just as for parks in wilderness areas, the most appropriate

and beautiful building design for parks in the middle of a large urban area should not be constrained by unreasonably low height limits.

Many standard light poles used for street and park lighting would be made nonconforming by a 35 foot height limit, unnecessarily restricting such lighting. Our Parks design staff note that taller poles can make lighting up to twice as energy efficient, and are needed for park lighting with excellent environmental control of light pollution. One rule of thumb is that the taller the pole the more vertical the light, providing for reduced horizontal spill and light pollution, and reduced impact on views and vistas. As noted above, the goal of minimizing interference with views in the Mississippi River Corridor Critical Area is not the same as a goal to keep buildings out of site that might be appropriate for a wild and scenic river but not for this area. The most iconic and appreciated views in the Mississippi River Corridor Critical Area include buildings and other structures for the multiple purposes and uses that this urban river corridor is all about. To fulfill the purpose of the critical area, consistent with direction and guidelines in MN Stat. 116G.15 and Exec. Order 79-19, there is no justification for being overly prescriptive about the height of structures in fully developed urban areas. That's why the Interim Development Regulations in Exec. Order 79-19 did not have a height limit for the urban diversified district.

Vegetation Management and Land Alteration Standards

Part 6106.0150 VEGETATION MANAGEMENT AND LAND ALTERATION STANDARDS

While provisions limiting removal and mandating replacement of vegetation are generally consistent with the direction in MN Stat. 116G.15 to manage the MRCCA in a way that “conserves the... environmental... resources and functions of the river corridor” and “protects and preserves the biological and ecological functions of the corridor,” the overly broad draft rule language (and any eventual local ordinances consistent with those rules) would be difficult, time-consuming, and expensive for LGUs to administer. They would also result in unreasonable restrictions of property use for many homeowners, and may prevent best land management practices in some cases. Within highly urbanized, fully developed areas, the vegetation management requirements would be inconsistent with existing development, create excessive burdens for property owners and the city, not make practical sense, and not be justified. Most of this would involve new regulation of private trees, shrubs and groundcover for which permits are not required.

It seems there are two things the vegetation management provisions might be intended to do: first, to protect vegetative communities that are large and/or of high-ecological quality or importance; and second, to protect slopes and bluffs from erosion and stability problems resulting from clearing of vegetation. While the draft language provides the most logical mechanism for this first purpose, there are other options for prevention erosion problems, and protecting the larger or higher-quality vegetative communities does not justify preventing ALL vegetation removal in other areas. Some more specific problems with the draft language in this section are addressed below, along with some suggested ways to help bring a narrower focus to this section that is more consistent with the overall purpose of MRCCA.

In Subp. 2, ‘significant existing vegetative stands’ and ‘canopies’ need to be defined. Same for ‘native plant communities’; if it is the definition is those areas identified by DNR MBS, this

should be made clear. Ideally, DNR would either identify these areas as part of the rules (on a separate map, or as part of district definitions) or provide the tools needed to LGUs to do so.

A larger issue stems from the inclusion of the bluff impact zones and slope protection zone as areas where the vegetation management provisions apply. As a result, the provisions apply to a large number of small, urban, residential lots. Any vegetation removal on such properties would be on a very small scale, not sufficient to cause substantial impact, even in aggregate. The impacts would likely be less than those associated with some of the activities for which exceptions are provided in the subpart, such as vegetation removal associated with new residential development and shoreline development for recreational purposes. Taking away the ability of owners of small urban residential lots to remove vegetation would be politically difficult to sell, and would do little to accomplish the goals set forth in the legislation mandating rule making. It would present a sizable compliance and enforcement problem for LGUs. In addition, it is not clear how some activities that might arguably be an improvement relative to the goals of the rules would be viewed under the proposed rules; for example, removing a turf hillside and replacing with a terraced garden. Beyond these issues, the requirements for granting the exceptions in this subpart are somewhat problematic. It is not clear what level of oversight would be required from the LGU in order to allow vegetation removal pursuant to the exceptions. On-site inspections and application/plan review could be costly for LGUs and homeowners.

Several possible alternatives to the draft rule language could help to bring a more appropriate focus to the draft language. Elimination of very steep slopes and the slope protection zones from the areas subject to the vegetation management provisions would be the simplest, but that might remove protection from areas where it could be useful. Another approach would be to eliminate the applicability of the vegetation management provisions for very steep slopes and SPZs only in districts CA-RTC through CA-UC. It may be good to provide some ability for LGUs to exempt areas from provisions related to very steep slopes and SPZs.

Subdivision and Land Development Standards

Part 6106.0170 SUBDIVISION AND LAND DEVELOPMENT STANDARDS

To compel private property owners to dedicate land for public purposes, including provisions in the draft rules that would require local units of government to compel property owners to set aside and restore private land for public conservation and habitat purposes, whether through perpetual conservation easement, deed restriction, or by fee title ownership by a government entity, just compensation must be first paid or secured. Language about this in the Fifth Amendment to the U.S. Constitution and in Article I, Bill of Rights, of the state constitution apply to these provisions in part 6106.0170 of the draft rules.

Requiring park and open space dedication at the time of platting is a good way to provide for the specific needs for parks and open space of the plat itself. Minn. Stat. § 462.358, Subd. 2b(a) gives municipalities limited authority to require new plats to dedicate a *reasonable amount* of the subdivision's land for use as public parks without having to pay for the land only to the extent that additional land is needed for parks "as a result of approval of the subdivision" itself. If a new plat will not itself create a need for additional park land, such as where the plat would be adequately served by existing parks, dedication of additional parkland can't be required without just compensation. The set percentages that would be required to be set aside under the

draft rules, with no relationship to any need for parks and open space created by the proposed development itself, are generally well above what courts have found to be a *reasonable amount* of the subdivision's land that can be required to be set aside for use as public parks and open space for public purposes without just compensation having to be paid.

To provide for open space for the general public purposes of the MRCCA, a better approach might be to require that the MRCCA Plan element of local comprehensive plans identify areas that need to be maintained and protected as public open space and public access for the broad public purposes of the MRCCA, and that these areas then be identified and protected for public open space purposes on an official map under the provisions of MN Stat. 462.359. Just compensation would need to be paid for these areas, for which the state might provide funding assistance.

Other Standards and Requirements

Part 6106.0050 DEFINITIONS, Subp. 52. Plat.

For the purposes of the Critical Area rules, including MN Stat. 515B for CIC plats (used to condo apartment buildings) in the definition of “*plat*,” and applying the provisions in part 6106.0150 of the draft rules to such plats, does not make practical sense. Cities are not involved in review or approval of CIC plats. Building and zoning regulations are applied to property covered by a CIC plat as for property with a single owner and a number of rental units. MN Stat. 515B 1-106 states that cities may not prohibit CIC type ownership or treat them differently than other types of ownership.

Part 6106.0070 PREPARATION, REVIEW, AND APPROVAL OF PLANS AND ORDINANCES

Add language reflecting language in MN Stat. 116G.15, consistent with language in Exec. Order 79-19 Standards and Guidelines for Preparing Plans and Regulations B.1-2, that the rules and MRCCA plans and ordinances are to manage the MRCCA as a multipurpose resource, consistent with its natural characteristics and its existing development, and in consideration of potential new commercial, industrial, and residential development, in a way that “conserves the scenic, environmental, recreational, mineral, economic, cultural, and historic resources and functions of the river corridor, . . . provides for the continuation, development, and redevelopment of a variety of urban uses, including industrial and commercial uses, and recreational and residential uses, where appropriate,” etc.. This language also needs to be reflected in the rules for development standards and local regulations.

The draft rules include several provisions which allow for small scale exceptions to development prohibitions as well as local flexibility in the implantation of the rules as ordinance. The inclusion of some of these provisions was specifically in response to comments provided informally to DNR staff prior to the release of the draft rules and is an improvement to the rules. However, a number of concerns still exist.

The draft rules presently contain a number of provisions which are overly proscriptive and which fail to adequately meet the charge of the DNR (from MN Stat. 116G.15) to provide for the “continuation, development, and redevelopment of a variety of urban uses, including industrial and commercial uses.” The inclusion of a provision [cite] which will potentially allow local government units, at the discretion of the DNR, to in special circumstances adopt

ordinances which are not in strict conformance with the MRCAA rules is an insufficient mechanism for addressing the shortcomings of the rules and does not meet the obligations of the DNR under the rulemaking legislation. The provisions invite confusion over the intent of the rules, and leaves uncertainty regarding how the rules will affect the City and our residents and business and property owners. It should not be necessary to ask for an exception to the rules in order for the rules to reasonably apply to the 23% of Critical Area parcels of land in Saint Paul.

The draft rules also provide for exceptions for limited removal of vegetation, land disturbance and installation of retaining walls and patios in area where it would otherwise be prohibited. These exceptions may not be sufficient in scope (i.e., the amount of vegetation removed or the size of a retaining wall) to allow reasonable use of long-developed residential lots. A more appropriate approach would be to craft blanket exceptions in long-developed urban areas such as within Saint Paul, or to craft rules that are more reasonable and consistent with existing development so that exceptions would not be necessary.